* **THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS (OS) No. 1281/1991**

Date of Decision: 22.07.2013

M/S BINATONE ELECTRONICS LTD .....Plaintiff

Through: Mr Mayank Goel, Advocate

Versus

M/S HARMAN AGENCIES & ANR .....Defendants

Through: Defendants are ex-parte

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a suit for recovery of Rs. 20,45,000/- (Rupees Twenty Lakh Forty Five Thousand Only) with interest pendent-lite and future interest @ 18% p.a. It is pertinent to note that the plaintiff company has already gone into liquidation in November 1992 and the Official Liquidator was granted the permission to continue with the suit.

2. The facts of the case in brief are that the plaintiff was a company incorporated under the provisions of the Indian Companies Act 1956 and is engaged in the business of manufacturing and selling television sets and audio systems. The defendant no.1 is a proprietorship concern run by defendant no.2, having a shop cum office at Chandigarh. Vide

an agreement dated 27.09.1986 (Exhibit PW1/1), the plaintiff company appointed the defendant no.1 as a Stockist on a non-exclusive basis in Chandigarh. The said agreement was subject to the jurisdiction of the courts at Delhi and was to subsist for an initial period of three years. However, the defendant no.1 continued to remain the Stockist for the plaintiff even after the expiry of the three years under certain varied terms. It had been purchasing goods from the plaintiff, mainly television sets, the payment of which was to be received at Delhi as the plaintiff had its Bank Account with State Bank of India. The mode of payment agreed was through bills of exchange drawn by the plaintiff, to be honored by defendant no.1.

3. In discharge of its liability towards the plaintiff in February 1991, defendant no 1 had accepted five bills of exchange for Rs 2,00,000/- (Rupees Two Lakhs Only) from the plaintiff (Exhibit PW1/3 Colly). However, upon presentation of the said bills of exchange, they stood dishonored by defendant no.1. On the basis of the dishonored bills of exchange, the plaintiff submits that a total sum of Rs. 18,40,886 (Rupees Eighteen Lakh Forty Thousand Eight Hundred and Eighty Six Only) was due and payable by the defendants as on January 1991. The amount of interest claimed by the plaintiff was 18%, which the plaintiff submits to be according to the custom of trade. Thus the total amount prayed including the interest is Rs. 20,45,000/- (Rupees Twenty Lakh Forty Five Thousand Only).

4. No written statement was filed by the defendants and they were subsequently proceeded ex parte vide order dated 13.08.2012. The

plaintiff was directed to lead ex-parte evidence and vide order dated 22.04.13 the evidence of the plaintiff was closed. A Local Commissioner was appointed vide order dated 24.04.1991 whereby he was directed to make an inventory of the goods lying in the premises of the defendants shop and to sign the Ledgers, Cash Books, Journals, stock registers, sale and purchase registers and all other relevant books of accounts relating to the business at the defendants' shop. Further, vide order dated 27.07. 2012 passed in **CO. PET. 93/1992**, permission was granted to the Official Liquidator to continue with the suit as the plaintiff company was ordered to be wound up on 02.09.1992.

5. I have heard the Ld. Official Liquidator and have perused the records.

6. The plaintiff has filed its affidavit by way of evidence of Sh. Sudhir Kapoor, Asstt. Official Liquidator which is at Ex PW1/A. According to the calculation done by him, the total amount as outstanding on 27.09. 2012 was Rs. 18,40,886 (Rupees Eighteen Lakh Forty Thousand Eight Hundred and Eighty Six Only) and with interest @ 18% p.a comes turned out to be Rs. 71,79,457.35 (Rupees Seventy One Lakhs Seventy Nine Thousand Four Hundred and Fifty Seven and Thirty Five Paise Only).

7. Ex. PW1/3 (Colly) are the letters enclosing five bills of exchange sent by the plaintiff to the State Bank of India (SBI), New Delhi, dated 30.01.1991, each for Rs. 2,00,000/- (Rupees Two Lakhs Only). There are five bills of exchange bearing SC Nos. IF/34, 35, 36,

37 and 38, each drawn on behalf of the defendant no. 1 firm due on various dates in February 1991. Thereafter, vide a letter dated 06.03.91 sent by the Branch Manager of the SBI, Chandigarh to the Industrial Finance Branch of SBI at New Delhi, it was informed to the latter that the bank at Chandigarh was unable to obtain the payment for the bills of exchange bearing SC Nos. IF-38, 37, 36 drawn on the defendant no.1. The bills of exchange were returned with the memo report stating thus:

"Payment is not forthcoming and retention limit expires"

Vide another letter dated 11.03.1991 the payment for bill of exchange bearing SC No. IF/35 was also not obtainable by SBI, Chandigarh with the same memo report as noted above. Also on record is the letter sent by the Branch Manager of SBI, New Delhi, informing the plaintiff that the bills of exchange bearing SC No. IF/35, 36, 37, and 38 have been returned as not forthcoming.

8. There are certain letters placed on record sent by the defendants to the plaintiff on various dates enclosing Bank Drafts for different amounts. But these letters are dated sometime in November 1990 i.e. before the bills of exchange were drawn by the plaintiff. Thus I find these letters are irrelevant to the transactions which are in dispute in the suit.

9. Since the defendants have not lead evidence to refute the contentions of the plaintiff right from the stage of filing a written

statement, and since all the relevant documents are found on record and have been exhibited, I find that a decree ought to be passed in favor of the plaintiff as prayed for.

10. Thus a decree of Rs. 71,79,457.35 (Rupees Seventy One Lakhs Seventy Nine Thousand Four Hundred and Fifty Seven and Thirty Five Paise Only) is awarded as per the calculations of the Official Liquidator with interest @ 18% p.a till the date of realization. The suit is hereby disposed. Decree be drawn accordingly.

M.L. MEHTA, J.

JULY 22, 2013
rmm